

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

JESSIE MCMORRIS, JR.,

Defendant-Appellant.

UNPUBLISHED

December 20, 2011

No. 298713

Wayne Circuit Court

LC No. 09-026769-FH

Before: SAAD, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v), and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to two years' imprisonment for his felony-firearm conviction and two years' probation for his possession of cocaine conviction. We affirm.

Defendant first argues that the prosecution presented insufficient evidence for a reasonable trier of fact to conclude beyond a reasonable doubt that defendant possessed less than 25 grams of cocaine and possessed a firearm during the commission of a felony. We disagree.

Appellate courts review a claim of insufficient evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). When reviewing a claim that the evidence presented by the prosecution was insufficient to support the defendant's conviction, appellate courts must view the evidence in a light most favorable to the prosecution to determine if a rational trier of fact could find beyond a reasonable doubt that the prosecution established the essential elements of the crime. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, mod 441 Mich 1201 (1992). Therefore, "a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the . . . verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Defendant asserts that the prosecution failed to show he possessed the cocaine in question. To prove possession of less than 25 grams of cocaine, the prosecution must show that defendant possessed cocaine, either actually or constructively. *People v Hardiman*, 466 Mich 417, 421-422; 646 NW2d 158 (2002). While inferences may be used to establish possession, defendant is correct that mere presence is not sufficient to establish possession beyond a reasonable doubt. *Id.* An additional connection must be shown. *Id.* However, when

considering the testimony of witnesses, the credibility of witnesses and the weight accorded to evidence are questions of fact, and any conflict in the evidence must be resolved in the prosecutor's favor. *People v McGhee*, 268 Mich App 600, 624; 709 NW2d 595 (2005).

In this case, Officers Kostanko and Kile testified that they were investigating a suspected "dope house." Upon investigating a man on the front porch of the home, defendant opened the door and dropped a yellow bag from his right hand. Officer Kostanko apprehended defendant and instructed Officer Kile to recover the bag. Inside the bag, Officer Kile found 17 individually packaged ziplock bags containing cocaine and a .38 caliber pistol. The testimony of the officers was sufficient to establish beyond a reasonable doubt that defendant actually possessed the cocaine.

Defendant also contends that there was insufficient evidence to prove that he possessed a gun. To prove felony-firearm, the prosecution must show that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony. *People v Taylor*, 275 Mich App 177, 179; 737 NW2d 790 (2007). The same testimony that was offered to prove that defendant possessed cocaine, i.e., a felony, also supports the court's finding that defendant possessed a .38 caliber pistol. That is, inside the yellow bag dropped by defendant, the officers discovered a gun. Accordingly, the evidence was sufficient to convict defendant of felony-firearm because it showed that defendant possessed a gun during the commission of a felony, i.e., the possession of less 25 grams of cocaine.

Although defendant testified that officers recovered the pistol from the couch, a prosecutor is not required to negate every reasonable theory consistent with the defendant's innocence. *Hardiman*, 466 Mich at 424. Rather, the prosecution must only introduce evidence sufficient to convince a reasonable jury in the face of whatever contradictory evidence the defendant might present. *Id.* In this case, the prosecution presented the testimony of two police officers who apprehended defendant. Defendant presented no motive for the officers to lie and the court found this dispositive. Having resolved the credibility issue in favor of the prosecution, the court found defendant guilty of possession of cocaine and felony-firearm. Accordingly, we conclude defendant's convictions were based on sufficient evidence.

Defendant next argues that his convictions are against the great weight of the evidence. We disagree. In determining whether the verdict was against the great weight of the evidence, this Court examines the evidence to determine whether it preponderated heavily against the verdict. *People v McCray*, 245 Mich App 631, 637; 630 NW2d 633 (2001). The focus of this test is on whether there is "a real concern that an innocent person may have been convicted" or that "it would be a manifest injustice to allow the guilty verdict to stand." *People v Lemmon*, 456 Mich 625, 644; 576 NW2d 129 (1998) (internal quotations and citations omitted).

Here, defendant's convictions are supported by the evidence. Two police officers testified that defendant dropped a yellow bag in their presence that contained cocaine and a .38 caliber pistol. Still, defendant argues that his convictions are against the great weight of the evidence because there was contradictory evidence and the prosecution's witnesses were unreliable. Defendant is asking this Court to act as a "thirteenth juror" and revisit credibility issues, which is a role that we are not permitted to take. See *People v Gadomski*, 232 Mich App

24, 28; 592 NW2d 75 (1998). We conclude that the court's verdict flowed from the testimony presented; therefore, the verdict was not against the great weight of the evidence.

Affirmed.

/s/ Henry William Saad
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause